

# EXHIBIT 42

## CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

| Page 1  | Page 3   |
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| UNITED STATES DISTRICT COURT<br>DISTRICT OF MINNESOTA   | 1                   I N D E X<br>2     EXHIBITS       DESCRIPTION       PAGE MARKED<br>3     Ex 350 Testing log, no Bates numbers   150<br>4        351 Warning label from the 200 Bair<br>5        Hugger, no Bates numbers           310<br>6<br>7   |
| In Re:<br>Bair Hugger Forced Air Warming<br>Products Liability Litigation   | 8     WITNESS       EXAMINATION BY       PAGE<br>9     Albert P. Van Duren   Mr. Bankston   4<br>10                    Mr. Assaad           113<br>11                    Ms. Zimmerman       292<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22<br>23<br>24<br>25   |
| This Document Relates To:<br>All Actions           MDL No. 15-2666 (JNE/FLM)  |  |
| DEPOSITION OF ALBERT P. VAN DUREN<br>VOLUME I, PAGES 1 - 326<br>MARCH 7, 2017   |  |
| (The following is the deposition of ALBERT P. VAN DUREN, taken pursuant to Notice of Taking Deposition pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, via videotape, at the offices of Ciresi Conlin L.L.P., 225 South 6th Street, Suite 4600, Minneapolis, Minnesota, commencing at approximately 9:00 o'clock a.m., March 7, 2017.)   |  |
| Page 2  | Page 4   |
| 1     APPEARANCES:<br>2     On Behalf of the Plaintiffs:<br>3        Mark D. Bankston<br>4        KASTER, LYNCH, FARRAR & BALL LLP<br>5        1010 Lamar, Suite 1600<br>6        Houston, Texas 77002<br>7<br>8        Genevieve M. Zimmerman<br>9        MESHBESHER & SPENCE, LTD.<br>10       1616 Park Avenue<br>11       Minneapolis, Minnesota 55404<br>12       Gabriel Assaad<br>13       KENNEDY HODGES<br>14       4409 Montrose Boulevard, Suite 200<br>15       Houston, Texas 77006<br>16<br>17       Michael A. Sacchet<br>18       CIRESI CONLIN L.L.P.<br>19       225 South 6th Street, Suite 4600<br>20       Minneapolis, Minnesota 55402<br>21       On Behalf of Defendants:<br>22       Jerry W. Blackwell and Peter J. Goss<br>23       BLACKWELL BURKE P.A.<br>24       432 South Seventh Street, Suite 2500<br>25       Minneapolis, Minnesota 55415<br>26<br>27       ALSO APPEARING:<br>28<br>29       Ryan M. Stirewalt, Videographer<br>30<br>31<br>32<br>33<br>34<br>35 | 1                   P R O C E E D I N G S<br>2                   (Witness sworn.)<br>3                   ALBERT P. VAN DUREN<br>4                   called as a witness, being first duly sworn,<br>5                   was examined and testified as follows:<br>6                   ADVERSE EXAMINATION<br>7                   BY MR. BANKSTON:<br>8        Q. Good morning, Mr. Van Duren.<br>9        A. <b>Good morning.</b><br>10       Q. We're going to skip some of the formalities<br>11       because I know you've been in that chair before, done<br>12       some depositions, so we won't go over all of that<br>13       today; I'm sure you're up to speed. But before we<br>14       dive in, I did want to talk to you, make sure that you<br>15       understood exactly what kind of deposition it is we're<br>16       taking today, and -- and by that I mean that today you<br>17       are appearing as a corporate representative for 3M.<br>18       Do you feel like you have an understanding of what<br>19       that is and what your purpose is here today?<br>20       A. <b>I believe so.</b><br>21       Q. Okay. I'm going to be asking you questions,<br>22       and in response to these questions today you're going<br>23       to be giving testimony as though you're the voice of<br>24       3M. Obviously, I can't put 3M in that chair, so<br>25       somebody has to be chosen. I've been informed that |

1 (Pages 1 to 4)

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| <p>1 air, has an effect on the particle counts in the<br/>2 sterile field.</p> <p>3 MR. BLACKWELL: Same objection.</p> <p>4 <b>A. It --</b></p> <p>5 <b>I mean it's possible that -- that that's one</b><br/><b>6 conclusion you could draw from this data.</b></p> <p>7 Q. Well every single study indicates that, so<br/>8 what is your basis that it's possible and not<br/>9 probable?</p> <p>10 MR. BLACKWELL: Object and move to strike<br/>11 counsel's comment/statement. Object to the form of<br/>12 the question.</p> <p>13 <b>A. Again, the -- the study at Amersfoort is a</b><br/><b>14 different type of study than that conducted by Legg.</b><br/><b>15 The -- the study at -- in Amersfoort looked at</b><br/><b>16 externally-generated particles in the sterile field;</b><br/><b>17 Legg looked at, ostensibly, particles being generated</b><br/><b>18 by the forced-air warming unit itself, so it's a</b><br/><b>19 different --</b></p> <p>20 <b>These are different kinds of studies.</b></p> <p>21 Q. Legg and McGovern used bubble counts and --<br/>22 and particle counters.</p> <p>23 <b>A. Oh, sorry. Yeah. Okay.</b></p> <p>24 Q. I mean we're --</p> <p>25 It doesn't matter where the particles are</p>   | <p>1 Q. I don't see a decrease in Exhibit 77 of<br/>2 infection rates. Do you?</p> <p>3 <b>A. Well they haven't --</b><br/><b>4 So in this particular exhibit the -- the</b><br/><b>5 rates haven't changed dramatically from, say, 1998 or</b><br/><b>6 1997 to 19 -- or to 2012, but if you look at the -- if</b><br/><b>7 you look at the second one that I have done using the</b><br/><b>8 data from Parvizi, there clearly is a trend in -- of</b><br/><b>9 decreased surgical-site infections, and it's more in</b><br/><b>10 line with the kinds of infection rates that we see at</b><br/><b>11 individual institutions in the United States.</b></p> <p>12 Q. Are we talking about the 2001-to-2009 data?</p> <p>13 <b>A. The latest paper, whichever -- whichever</b><br/><b>14 data set that is.</b></p> <p>15 Q. Okay. Well his own paper showed an increase<br/>16 over the -- from 2001 to 2009. Even though it was a<br/>17 slight increase, it was an increase.</p> <p>18 <b>A. No, I don't think that's correct. The data</b><br/><b>19 that I have shows a -- a clear decline in infection --</b><br/><b>20 in joint infection rates over that time period.</b></p> <p>21 Q. I want to print up that article for you.<br/>22 We'll move on and I'll get it printed up and we can<br/>23 talk about it.</p> <p>24 We're talking about the 2012 article;<br/>25 correct?</p> |
| <p>1 coming from. Okay? Because particles are all over<br/>2 the operating room and underneath the operating room<br/>3 table and everywhere. Do you agree?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. Okay. Based on the data that we have today,<br/>6 including the study funded by 3M as well as other<br/>7 studies, every single study indicates that the Bair<br/>8 Hugger increases the particle count over the sterile<br/>9 field; correct?</p> <p>10 <b>A. In absolute numbers, yes.</b></p> <p>11 Q. Yes. Okay. And you have no internal<br/>12 studies to refute that; correct?</p> <p>13 <b>A. No, we don't.</b></p> <p>14 Q. What's defendants' knowledge and analysis of<br/>15 third-party testing regarding whether or not the Bair<br/>16 Hugger causes surgical-site infection?</p> <p>17 <b>A. Well again, the analysis that I showed you</b><br/><b>18 that was done with the CDC data, for example. And the</b><br/><b>19 secular trend of deep joint infection over the last</b><br/><b>20 decade or so has generally declined in hip and knee</b><br/><b>21 implant surgery, so at a -- at a macro level there</b><br/><b>22 doesn't appear to be an increase in the number of</b><br/><b>23 these infections despite the fact that patients are</b><br/><b>24 generally older and sicker and there are more of them</b><br/><b>25 now than there were a decade ago.</b></p> | <p>1 <b>A. I believe that's the corr -- yeah, I believe</b><br/><b>2 that's the correct one.</b></p> <p>3 Q. Any other articles or studies that you rely<br/>4 upon with respect to third-party testing regarding<br/>5 surgical-site infection?</p> <p>6 <b>A. Well the Kimberger article would -- for</b><br/><b>7 example, although that's not surgical-site infection,</b><br/><b>8 but --</b></p> <p>9 Q. I guess a preface -- I don't mean to<br/>10 interrupt -- I want to talk about total hip and total<br/>11 knee arthroplasty.</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Okay.</p> <p>14 <b>A. Right.</b></p> <p>15 Q. Isn't it true that there's a pilot study<br/>16 being performed right now funded by 3M in the U.K.?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. Okay. Is that study started?</p> <p>19 <b>A. I don't think it started recruiting yet.</b></p> <p>20 Q. Okay. And that's going to look at<br/>21 surgical-site infections for a certain type of<br/>22 orthopedic surgery; correct?</p> <p>23 <b>A. Yes, as one of the outcomes.</b></p> <p>24 Q. And one of the investigators is Mike Reed;<br/>25 correct?</p>  |